

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RUPAM SALUJA,

Plaintiff,

v.

ADVANCE AMERICA CASH ADVANCE
CENTERS OF NEVADA, INC., a foreign
corporation, et al.,

Defendants.

Case No. 3:14-cv-00311-MMD-VPC

ORDER

(Def.'s Motion to Dismiss – dkt. no. 8)

I. SUMMARY

Before the Court is Defendant Advance America Cash Advance Centers of Nevada, Inc.'s ("Advance America") Motion to Dismiss ("Motion"). (Dkt. no. 8.) For the reasons discussed below, the Motion is granted.

II. BACKGROUND

The following background facts are primarily taken from the Complaint. As the Complaint's factual allegations are sparse, they are supplemented by facts presented in the parties' briefing.

Plaintiff was employed with Advance America as a Branch Manager from October 11, 2007, through October 24, 2011. Plaintiff is an Asian-American woman over 40 years of age. She suffered a disabling condition as a result of an injury caused by a customer in 2010. Plaintiff alleges that during her employment with Advance America, she was

1 subjected to various forms of discrimination based on her race, age and disability and
2 was ultimately terminated from employment for retaliatory and discriminatory reasons.

3 On January 30, 2014, Plaintiff submitted her discrimination charge to the U.S.
4 Equal Employment Opportunity Commission ("EEOC"). On April 13, 2014, the EEOC
5 issued Plaintiff a right to sue letter, but also indicated that her charges were time-barred
6 because she did not file her charge within 300 days of the last discriminatory act.

7 Plaintiff then filed this action on June 13, 2014. The Complaint asserts claims for
8 gender discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-
9 2(a)(1) ("Title VII"), age discrimination under the Age Discrimination in Employment Act
10 ("ADEA"), 29 U.S.C. § 621, *et seq.*, disability discrimination under the Americans with
11 Disabilities Act ("ADA"), 42 U.S.C. §§ 12101–12213, violations of Nevada state law, and
12 negligent supervision. Defendants seek dismissal under Fed. R. Civ. P. 12(b)(6),
13 contending that Plaintiff's claims are time-barred.

14 **III. DISCUSSION**

15 **A. Legal Standard**

16 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
17 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide
18 "a short and plain statement of the claim showing that the pleader is entitled to relief."
19 Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While
20 Rule 8 does not require detailed factual allegations, it demands "more than labels and
21 conclusions" or a "formulaic recitation of the elements of a Claim." *Ashcroft v. Iqbal*, 556
22 U.S. 662, 678 (2009) (*citing Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "Factual
23 allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at
24 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual
25 matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678
26 (internal citation omitted).

27 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to
28 apply when considering motions to dismiss. First, a district court must accept as true all

1 well-pled factual allegations in the complaint; however, legal conclusions are not entitled
2 to the assumption of truth. *Iqbal*, 556 U.S. at 678. Mere recitals of the elements of a
3 claim, supported only by conclusory statements, do not suffice. *Id.* Second, a district
4 court must consider whether the factual allegations in the complaint allege a plausible
5 claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's complaint
6 alleges facts that allow the court to draw a reasonable inference that the defendant is
7 liable for the alleged misconduct. *Id.* at 678. Where the complaint does not permit the
8 court to infer more than the mere possibility of misconduct, the complaint has "alleged —
9 but it has not shown — that the pleader is entitled to relief." *Id.* (internal quotation marks
10 omitted). A complaint must contain either direct or inferential allegations concerning "all
11 the material elements necessary to sustain recovery under *some* viable legal theory."
12 *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101,
13 1106 (7th Cir. 1989) (emphasis in original)). When the claims in a complaint have not
14 crossed the line from conceivable to plausible, the complaint must be dismissed.
15 *Twombly*, 550 U.S. at 570.

16 **B. Analysis**

17 Exhaustion of administrative remedies is a prerequisite to adjudication of claims
18 for discrimination under Title VII, the ADEA and the ADA. See *Josephs v. Pac. Bell*, 443
19 F.3d 1050, 1061 (9th Cir. 2006) (a plaintiff must file administrative charge before filing
20 ADA suit); *Lyons v. England*, 307 F.3d 1092, 1103 (9th Cir. 2002) ("a plaintiff is required
21 to exhaust his or her administrative remedies before seeking adjudication of a Title VII
22 claim"); *Sanchez v. Pac. Powder Co.*, 147 F.3d 1097, 1099 (9th Cir. 1998) (same for
23 ADEA claims). Exhaustion requires that the complainant file a timely charge with the
24 EEOC, thereby allowing the agency time to investigate the charge. See 42 U.S.C. §
25 12117(a); 29 U.S.C. § 626(d); 42 U.S.C. § 2000ff-6. A plaintiff timely files a charge with
26 the EEOC if the charge is filed "within 180 days from the last act of alleged
27 discrimination" or, in a state like Nevada that has its own local agency, within 300 days

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1 of the last discriminatory act. *Laquaglia v. Rio Hotel & Casino, Inc.*, 186 F.3d 1172, 1175
2 (9th Cir. 1999).

3 Plaintiff filed her EEOC charge on January 30, 2014, far in excess of 300 days
4 after her October 24, 2011, termination from employment with Advance America.¹
5 Plaintiff does not dispute this fact, but rather asserts she is entitled to equitable tolling.

6 Exhaustion is akin to a statute of limitations and is subject to equitable tolling.
7 *Leong v. Potter*, 347 F.3d 117, 1122–23 (9th Cir. 2003) (citations omitted). “Generally, a
8 litigant seeking equitable tolling bears the burden of establishing two elements: (1) that
9 he has been pursuing his rights diligently, and (2) that some extraordinary circumstance
10 stood in his way.” *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)) (citing *Irwin v. Dept.*
11 *of Veterans Affairs*, 498 U.S. 89, 96 (1990)).

12 Plaintiff fails to offer an explanation for her failure to file within the 300 day filing
13 period beyond asserting a lack of knowledge of the filing deadlines. However, ignorance
14 of the deadlines is an insufficient excuse to justify equitable tolling. See *Irwin v. Dept. of*
15 *Veterans Affairs*, 498 U.S. at 96 (holding that equitable tolling does not apply to “a
16 garden variety claim of excusable neglect”). Plaintiff knew or should have known of the
17 possible existence of her discrimination claims in October 2011 when she was allegedly
18 terminated for discriminatory reasons. See *Santa Maria v. Pac. Bell*, 202 F.3d 1170,
19 1178 (9th Cir. 2000) (equitable tolling does not apply where a plaintiff “knew or should
20 have known of the possible existence of a disability discrimination claim as early as the
21 very day he was fired”), *overruled on other grounds by Socop-Gonzalez v. INS*, 272 F.3d
22 1176, 1194–96 (9th Cir. 2001) (en banc).

23 Plaintiff’s charge with the EEOC was untimely and the filing deadline was not
24 equitably tolled. Plaintiff has therefore failed to exhaust her administrative remedies. The
25 Court will grant Advance America’s motion to dismiss. The Court will not address
26

27 ¹The pertinent time frame is the 300 days following the last act of discrimination
28 (i.e., her termination) — which expired on August 19, 2012.

1 Defendant's arguments with respect to Plaintiff's state law claims as the Court declines
2 to exercise supplemental jurisdiction over these claims pursuant to 28 U.S.C. § 1367(c).

3 **IV. CONCLUSION**

4 It is therefore ordered that Defendant's Motion to Dismiss (dkt. no 8) is granted.
5 Plaintiff's federal law claims under Title VII, the ADEA and the ADA are dismissed with
6 prejudice. Plaintiff's remaining state law claims are dismissed without prejudice. The
7 Clerk is instructed to close this case.

8 DATED THIS 12th day of March 2015.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE